

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION**

EARLINE HICKS

PLAINTIFF

v.

5:12-cv-00199-BSM-JJV

W. C. DUB BRASSELL
DETENTION CENTER

DEFENDANT

PROPOSED FINDINGS AND RECOMMENDATIONS

INSTRUCTIONS

The following recommended disposition has been sent to United States District Judge Brian S. Miller. Any party may serve and file written objections to this recommendation. Objections should be specific and should include the factual or legal basis for the objection. If the objection is to a factual finding, specifically identify that finding and the evidence that supports your objection. An original and one copy of your objections must be received in the office of the United States District Court Clerk no later than fourteen (14) days from the date of the findings and recommendations. The copy will be furnished to the opposing party. Failure to file timely objections may result in a waiver of the right to appeal questions of fact.

If you are objecting to the recommendation and also desire to submit new, different, or additional evidence, and to have a new hearing for this purpose before either the District Judge or Magistrate Judge, you must, at the time you file your written objections, include the following:

1. Why the record made before the Magistrate Judge is inadequate.
2. Why the evidence to be proffered at the new hearing (if such a hearing is granted) was not offered at the hearing before the Magistrate Judge.

3. The details of any testimony desired to be introduced at the new hearing in the form of an offer of proof, and a copy, or the original, of any documentary or other non-testimonial evidence desired to be introduced at the new hearing.

From this submission, the District Judge will determine the necessity for an additional evidentiary hearing. Mail your objections and “Statement of Necessity” to:

Clerk, United States District Court
Eastern District of Arkansas
600 West Capitol Avenue, Suite A149
Little Rock, AR 72201-3325

DISPOSITION

Plaintiff, Earline Hicks, is a detainee in the W.C. Dub Brassell Detention Center. She filed a *pro se* Complaint pursuant to 42 U.S.C. § 1983, alleging the Defendant violated her constitutional rights. After careful review of the allegations in Plaintiff’s Complaint, the Court finds that her Complaint (Doc. No. 2) should be dismissed for failure to state a claim on which relief may be granted.

I. SCREENING

The Prison Litigation Reform Act (PLRA) requires federal courts to screen prisoner complaints seeking relief against a governmental entity, officer, or employee. 28 U.S.C. § 1915A(a). The Court must dismiss a complaint or portion thereof if the prisoner has raised claims that: (a) are legally frivolous or malicious; (b) fail to state a claim upon which relief may be granted; or (c) seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(A)(b).

An action is frivolous if “it lacks an arguable basis either in law or in fact.” *Neitzke*

v. Williams, 490 U.S. 319, 325 (1989). Whether a plaintiff is represented by counsel or is appearing *pro se*, his complaint must allege specific facts sufficient to state a claim. See *Martin v. Sargent*, 780 F.2d 1334, 1337 (8th Cir.1985).

An action fails to state a claim upon which relief can be granted if it does not plead “enough facts to state a claim to relief that is plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The Court must also weight all factual allegations in favor of the plaintiff, unless the facts alleged are clearly baseless. *Denton v. Hernandez*, 504 U.S. 25, 32 (1992).

II. ANALYSIS

“To state a claim under § 1983, a plaintiff must allege the violation of a right secured by the Constitution and laws of the United States, and must show that the alleged deprivation was committed by a person acting under color of state law.” *West v. Atkins*, 487 U.S. 42, 48 (1988); *Buckley v. Barlow*, 997 F.2d 494, 495 (8th Cir. 1993). “The traditional definition of acting under color of state law requires that the defendant in a § 1983 action have exercised power possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law.” *West*, 487 U.S. at 49 (internal quotations omitted). For liability under § 1983 to attach, there must be “a causal link to, and direct responsibility for, the deprivation of rights.” *Madewell v. Roberts*, 909 F.2d 1203, 1208 (8th Cir. 1990).

In her Complaint, Plaintiff names only the W.C. Dub Brassell Detention Center as a Defendant. (Doc. No. 2). The W.C. Dub Brassell Detention Center is not an a person or entity subject to suit under § 1983. See *Owens v. Scott*, 328 F.3d 1026, 1027 (8th Cir. 2003);

Ketchum v. City of W. Memphis, Ark., 974 F.2d 81, 82 (8th Cir. 1992); *Dean v. Barber*, 951 F.2d 1210, 1214 (11th Cir. 1992). The Court, therefore, finds that Plaintiff's Complaint (Doc. No. 2) should be DISMISSED for failure to state a claim upon which relief may be granted.¹

III. CONCLUSION

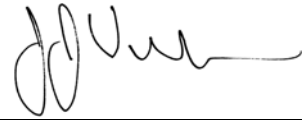
IT IS, THEREFORE, RECOMMENDED that:

1. Plaintiff's Complaint (Doc. No. 2) should be DISMISSED for failure to state a claim on which relief may be granted.
2. Dismissal of Plaintiff's Complaint should constitute a "strike" within the meaning of the Prison Litigation Reform Act (PLRA), 28 U.S.C. § 1915(g).²
3. The Court should certify, pursuant to 28 U.S.C. § 1915(a)(3), that an *in forma pauperis* appeal from an Order adopting this recommendation and an accompanying Judgment would not be taken in good faith.

¹If Plaintiff wishes to cure the defects in her Complaint, she should seek to file an Amended Complaint stating: 1) all the parties she believes deprived her of her constitutional rights and whom she wishes to sue in this action; 2) the specific facts against each named defendant in a simple, concise, and direct manner; 3) whether she is suing each defendant in his/her individual or official capacity, or in both capacities; and 4) how Plaintiff was harmed. Plaintiff is cautioned that filing an Amended Complaint would render her Complaint without legal effect. *In re Atlas Van Lines, Inc.*, 209 F.3d 1064, 1067 (8th Cir. 2000).

²The PLRA provides: "In no event shall a prisoner bring a civil action or appeal a judgment in a civil action under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted...." See *Patton v. Jefferson Correctional Center*, 136 F.3d 458, 462-64 (5th Cir. 1998), where the court held that dismissal of a 42 U.S.C. Section 1983 action in part as frivolous, and in part for failure to exhaust state court remedies as a habeas claim, should count as a strike within the meaning of Section 1915(g).

DATED this 15th day of June, 2012.

A handwritten signature in black ink, appearing to read 'Joe J. Volpe', written above a horizontal line.

JOE J. VOLPE
UNITED STATES MAGISTRATE JUDGE